IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN S. KOONTZ and STANLEY ZUCZEK, Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 99-CV-3191
UNITED STATES STEEL, LLC, Defendant.	:	

MEMORANDUM

Green, S.J. **March _____, 2002**

Presently before the Court is Plaintiffs' Motion for Summary Judgment, Defendant's Response, Plaintiffs' Reply and Defendant's Sur-reply. For the foregoing reasons, Plaintiffs' motion will be dismissed without prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about November 27, 1998, the United Steelworkers of America, Local Union No. 5092, AFL-CIO ("United Steelworkers") filed charges of unfair labor practices with the National Labor Relations Board ("NLRB") against United States Steel, LLC ("Defendant"), then known as USX Corporation, on behalf of Plaintiffs Brian Koontz and Stanley Zuczek (collectively "Plaintiffs"), employees of Defendant.[1] The charges stemmed from Plaintiffs' involvement with the grievance committee for Local 5092 of the United Steelworkers, involvement based in part on their advocacy on behalf of two female employees who were allegedly sexually harassed by one of Defendant's managers. United Steelworkers asserted that because Plaintiffs' union activities constituted "protected activity" under the National Labor Relations Act, the disciplinary

[1]On July 2, 2001, USX Corporation was reorganized. United States Steel, LLC, a Delaware limited liability company, is the successor by merger to USX Corporation and includes the steel making facilities formerly operated by U.S. Steel Group.

actions taken against Plaintiffs by Defendant in retaliation for their union activities constituted unfair labor practices. The disciplinary actions included: (1) the October 20, 1997 suspensions for missing the Safety and Communications meeting; (2) the December 22, 1997 suspensions and the January 5, 1998 terminations for failing to return to work; and (3) the May 29, 1998 suspensions and the June 4, 1998 terminations for failing to return company property.[2]

On or about June 23, 1999, Plaintiffs instituted an action in this Court, alleging that Defendant had discriminated and retaliated against them on the basis of the assistance they provided, in their capacity as union officials, to the two aggrieved female employees. Plaintiffs filed a five (5) count complaint bringing claims against Defendant for violations of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. ("Title VII") (Count I), 42 U.S.C. § 1981a (Count II), the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 959 *et seq*. ("PHRA") (Count III), the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq*. ("FMLA") (Count IV), and intentional infliction of emotional distress under Pennsylvania common law (Count V). Plaintiffs also requested punitive damages for Counts I through IV.

On November 15, 2000, Defendant moved for summary judgment against each of Plaintiffs' claims, Counts I through V, as well as against Plaintiffs' request for punitive damages. This Court granted Defendants' Motion for Summary Judgment as to Counts II and V, Plaintiffs' Request for Punitive Damages for Counts II, III and IV as well as Plaintiff Zuczek's FMLA claim

[2]Plaintiffs were also subject to individual disciplinary actions. These actions included: (1) Zuczek's removal from the Accounting Department in November of 1996; (2) Zuczek's suspension on November 11, 1997 for using profane language; and (3) Koontz's October 31, 1998 suspension and November 5, 1998 discharge.

in Count IV.[3] The Court denied Defendant's motion in all other respects.

As to the unfair labor practice charges brought by United Steelworkers against Defendant on Plaintiffs' behalf, on July 25, 2001, an administrative law judge ("ALJ"), following an eight (8) day trial, issued a decision relating to those charges.[4] Prior to the ALJ's decision, however, the NLRB held arbitration hearings regarding Plaintiffs' October 20, 1997 suspensions and January 5, 1998 discharges. The arbitration panel concluded that the disciplinary actions taken against Plaintiffs lacked proper cause. Therefore, because the ALJ deferred to the arbitration decisions relating to the October 1997 and January 1998 disciplinary actions, his decision was based solely upon whether the decision to terminate Plaintiffs on June 4, 1998 constituted an unfair labor practice under the National Labor Relations Act. The ALJ concluded that "because of their union and other protected concerted activities, [Defendant] has engaged in unfair labor practices . . . ."

On September 6, 2001, pursuant to 29 C.F.R. § 102.46, Defendant filed exceptions to the ALJ's decision as well as a brief in support of those exceptions. Plaintiffs filed the instant Motion for Summary Judgment, moving to have judgment entered against Defendant on Counts I (Title VII) and III (PHRA) on a theory of collateral estoppel with regard to the decision of the

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[3]The Court conditionally granted Defendant's motion for summary judgment with regard to Zuczek's FMLA claim, without prejudice to Zuczek submitting evidence that he was eligible for FMLA leave at the final pretrial conference scheduled for July 18, 2001. At the July 18, 2001 final pretrial conference, Zuczek presented no further evidence to support his FMLA claim. Rather, prior to the conference, Zuczek filed a Motion to Reinstate the FMLA claim. By order dated August 8, 2001, the Court denied that motion, finding that Zuczek had offered no evidence to support his claim. By order dated September 24, 2001, the Court denied Zuczek's Motion for Reconsideration of the August 8 Order.

[4]The ALJ heard testimony on June 6-7, 2000, August 14-18, 2000 and September 6, 2000.

ALJ.

II. LEGAL STANDARD

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. See Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

III. DISCUSSION

Collateral estoppel, otherwise known as issue preclusion, precludes litigation of identical issues adjudicated in a prior action against the same party or a party in privity. See Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979). Four factors must be present for a claim of collateral estoppel to be valid:

> 1) the issue decided in the prior adjudication was identical with the one presented in the later action, 2) there was a final judgment on the merits, 3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication, and 4) the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action.

Kelley v. TYK Refractories Co., 860 F.2d 1188, 1193-93 (3d Cir. 1988).

In support of their motion for summary judgment, Plaintiffs argue that the application of collateral estoppel is appropriate because the four required elements have been met. First,

Plaintiffs claim that the decision of the ALJ was final and on the merits. Second, Plaintiffs claim that the issue decided by the ALJ is identical to the issue now pending before the Court. Specifically, Plaintiffs aver that the ALJ's findings of fact and conclusions of law as to whether Plaintiffs' representation of the two aggrieved women, in their capacity as union officials, constituted "protected activity" under the National Labor Relations Act are transferable since the ultimate issue in Counts I and III of this case is whether Plaintiffs' representation of the two women, in their capacity as union officials, constituted "protected activity" under Title VII and the PHRA such that their June 4, 1998 discharges for their roles in opposing sexual harassment would be unlawful. Third, Plaintiffs claim that Defendant had both the opportunity and motive to fully litigate this issue in the prior proceedings.[5]

In response, Defendant articulates four distinct arguments against the application of collateral estoppel: (1) the decision of the ALJ is not a "final judgment" because Defendant has filed exceptions to the ALJ's decision, and as such, the decision has not been adopted as the decision of the NLRB; (2) the factual and legal issues remaining to be tried in this case are not identical to those before the NLRB; (3) the NLRB did not have jurisdiction to decide the issue of retaliation under Title VII and the PHRA; and (4) this federal action affords Defendant procedural opportunities not available to it before the NLRB. Although Defendant challenges all four factors, a finding that one of the factors has not been satisfied will defeat a claim for collateral estoppel.

Upon review of the parties' claims, it appears that Plaintiffs, at this time, are not entitled

[5]There is no dispute that Defendant, against whom collateral estoppel is asserted, was a party in the NLRB hearing.

to summary judgment as a matter of law. Plaintiffs' contention that the ALJ's decision is a "final" one for purposes of collateral estoppel is without support. Plaintiffs cite several cases which recite the doctrine that the decisions of an administrative agency may be given preclusive effect when that "administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an opportunity to litigate." United States v. Utah Construction Co., 384 U.S. 394, 422 (1996); Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 107 (1991); Frye v. United Steelworkers of America, 767 F.2d 1216, 1219 (7th Cir. 1985). These cases, however, do not support the contention that the decision of an ALJ, under appeal to the agency's appellate board and therefore, not yet affirmed by the board, constitutes a final decision. Therefore, Plaintiffs' Motion for Summary Judgment is untimely. Accordingly, I will dismiss Plaintiffs' motion without prejudice.

An appropriate order follows.

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ORDER

AND NOW, this _____ day of March, 2002, upon consideration of Plaintiffs' Motion for Summary Judgment, Defendant's Response, Plaintiffs' Reply and Defendant's Sur-reply, **IT IS HEREBY ORDERED** that Plaintiffs' motion is **DISMISSED without prejudice**.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.